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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/714,930   | 11/18/2003  | Kazunari Kanbe       | 033697-007          | 3038             |
| 21839  | 7590        | 08/16/2005           | EXAMINER            |                  |
| BUCHANAN INGERSOLL PC<br>(INCLUDING BURNS, DOANE, SWECKER & MATHIS)<br>POST OFFICE BOX 1404<br>ALEXANDRIA, VA 22313-1404 |             |                      | JOHNSON, VICKY A    |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3682                |                  |

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                              |  |
|------------------------------|-------------------------------|------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/714,930 | Applicant(s)<br>KANBE ET AL. |  |
|                              | Examiner<br>Vicky A. Johnson  | Art Unit<br>3682             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/18/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

2. Figures 7-12 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 1 and 10 are objected to because of the following informalities: Both claims include the limitation "a swelling portion", which implies that the member will impart motion. The "swelling portion" is actually a raised or protruding member on the pedal and does not impart any motion. It is suggested that the limitation be changed to better reflect the actual member that it represents. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 9-16 and 18 are rejected under 35 U.S.C. 102(a) as being anticipated by applicant's admitted prior art.

Applicant's prior art disclose a pedal arm (120) pivoted when stepped on for transmitting the stepping-on force; and a pedal pad (130) mounted on an end upper portion of said pedal arm for being stepped on the driver's foot; said pedal pad including a pedal pad upper portion (see Fig 12) and a pedal pad side portion (132); said pedal arm including an arm end portion (121) for mounting said pedal pad and an arm body (see Fig 7); and said arm end portion having a pad mounting upper portion (122) for mounting said pedal pad, a pad mounting side portion (123) for mounting said pedal pad side portion, and a swelling portion (40) provided at said pad mounting side portion under the end portion of said pedal pad side portion and laterally protruding to have almost the same height as the thickness of said pedal pad side portion (see Fig 11).

Re claims 2 and 11, said pedal arm is formed to be a U-letter shape in cross-section (see Fig 11).

Re claims 3-6, 9, 12-15, and 18, even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. (See MPEP 2113)

Re claims 7 and 16, said pedal pad covers the whole of the right side of said pad mounting upper portion provided at said arm end portion and also covers the circumferential portion of the wrong side of said pad mounting upper portion (see Fig 7).

Re claims 9 and 18, said pedal pad is made of rubber or soft synthetic resin (see Fig 11) and wherein in Insertion Forming technology, said pedal pad is formed bodily on said arm end portion with the same being set in a casting mold.

6. Claims 1, 5, 6, 8-10, 14, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Swenson (US 5,609,069).

Swenson discloses a brake pedal comprising: a pedal arm (72) pivoted when stepped on for transmitting the stepping-on force; and a pedal pad (80) mounted on an end upper portion of said pedal arm for being stepped on the driver's foot; said pedal pad including a pedal pad upper portion (see Fig 7) and a pedal pad side portion (unnumbered part extending to the left side of Fig 7); said pedal arm including an arm end portion (76) for mounting said pedal pad and an arm body (74); and said arm end portion having a pad mounting upper portion (top of 76) for mounting said pedal pad, a pad mounting side portion (left side of 76) for mounting said pedal pad side portion, and a swelling portion (left side of part 76 bent into part 74) provided at said pad mounting side portion under the end portion of said pedal pad side portion and laterally protruding to have almost the same height as the thickness of said pedal pad side portion (see Fig 7).

Re claims 5, 6, 9, 14, 15, and 18, even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. (See MPEP 2113)

Re claims 8 and 17, said pedal pad is joined by an adhesive to said pad mounting upper portion of said arm end portion (col. 1 lines 30-39).

Re claims 9 and 18, said pedal pad is made of rubber or soft synthetic resin (col. 1 lines 60-65) and wherein in Insertion Forming technology, said pedal pad is formed bodily on said arm end portion with the same being set in a casting mold.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


|           |               |             |
|-----------|---------------|-------------|
| 6,622,592 | Lee           | (pedal pad) |
| 5,884,534 | Knoll et al   | (pedal pad) |
| 4,404,439 | Leighton      | (pedal pad) |
| 5,321,995 | Zedan         | (pedal pad) |
| 6,513,407 | Higgins       | (pedal pad) |
| 5,738,180 | Hofmann et al | (pedal pad) |
| EP1413482 | Donadio       | (pedal pad) |

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (571) 272-7099. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Vicky A. Johnson 8/5/05  
Examiner  
Art Unit 3682